



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 28, 1995

Mr. Kevin Raymond
Assistant General Counsel
Legal Services
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR95-877

Dear Mr. Raymond:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 34493.

The Texas Department of Public Safety (the "department") received an open records request for a tape recording of a telephone call that a state trooper made to the department on the night his wife was fatally shot during a domestic disturbance. You explain that the circumstances surrounding the shooting are the subject of a pending criminal investigation. Although the department is not the law-enforcement agency investigating the shooting, you contend the department may withhold the tape recording from the public pursuant to the "law-enforcement" exception, section 552.108 of the Government Code. We agree.¹

Where an incident involving allegedly criminal conduct is under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information that relates to the incident.² Open Records Decision Nos. 474 (1987), 372 (1983). Clearly, the requested tape recording directly relates to the shooting incident and very well may be used as evidence in the prosecution of this case. Cf.

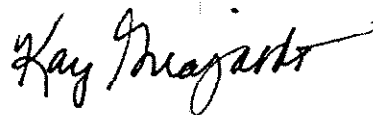
¹Because we resolve your request under section 552.108, we need not address your other arguments for withholding this information.

²You also inform us that the department has provided a copy of the tape recording to the Corpus Christi Police Department, the law-enforcement agency investigating the shooting.

Attorney General Opinion MW-446 (1982) (evidence obtained at the scene of a crime is presumptively excepted by statutory predecessor to section 552.108). Accordingly, we conclude that at this time the requested tape recording comes under the protection of section 552.108.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hamilton Guajardo
Assistant Attorney General
Open Government Section

KHG/RWP/rho

Ref.: ID# 34493

Enclosure: Tape recording

cc: Mr. Carlos Valdez
Nueces County District Attorney
205 Courthouse
901 Leopard Street
Corpus Christi, Texas 78401
(w/o enclosure)

Mr. Robert Gonzales
Assignment Editor
KIII-TV
P.O. Box 6669
Corpus Christi, Texas 78466
(w/o enclosure)